Menaka Deivarayan v Pentadbir Tanah Daerah Bagan Datuk, Perak & Ors

HIGH COURT (IPOH) — JUDICIAL REVIEW NO AA-25–2–02 OF 2020
SU TIANG JOO JC
30 OCTOBER 2020

Civil Procedure — Judicial review — Application for judicial review — Applicant applied for judicial review challenging first respondent's decision in rejecting application for transfer of land — Whether application for leave to apply for judicial review filed was out of time — Whether applicant should file an application for extension of time first before filing application for leave to apply for judicial review or could both applications be rolled-up in one application — Whether a leave to apply for judicial review should be given — Rules of Court 2012 O 53 r 3(6)

On 26 February 2020, the applicant applied in encl 1 for leave to apply for judicial review of the decision made by the State Authority of Perak refusing to give its consent for two pieces of lands which the applicant inherited from her late father's estate to be transferred to her. In abundance of caution, she applied for an extension of time, if necessary, for her to make the application for judicial review. The court allowed both the applications on 25 September 2020. The respondents appealed. The applicant, Menaka Deivarayan, an Indian national. Her father, SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar ('Meyyappa Chettiar'), died more than 44 years ago on 22 May 1976 leaving her the sole beneficiary of his estate. Two pieces of vacant land situated in Perak are part of his estate, one piece held under issue document of title Geran Mukim 2109 Lot 568 with an area of 3.063 hectares and the other held under Geran Mukim 2105 Lot 800 with both pieces of land in Mukim Bagan Datoh, Daerah Hilir Perak, Negeri Perak ('the said property'). She came to Malaysia to claim her inheritance. By order made on 26 January 2017, the applicant was granted leave by the High Court at Ipoh for the said property to be transferred into her name as the sole beneficiary. Being a non-citizen of Malaysia, she was advised by her solicitors in Malaysia that she needed the consent of the state authority before she can be registered as the registered proprietor of the said lands but that it was only a formality. The applicant's local solicitors submitted two applications, one for each piece of land, to the Pentadbir Tanah Daerah Bagan Datuk, Perak who was the first respondent for the state authority's approval for her to be registered as the proprietor of the said property. Only on 31 October 2019 were her solicitors made aware that these two applications were rejected. No reasons at all were given for the first rejection contained in two letters both dated 23 July 2019. The applicant

A accepted the advice of her solicitors to apply to the first respondent to reconsider this purported rejection but again the applicant's was rejected with no reason was given ('the rejection of 6 January 2020). The rejection was received by the applicant's solicitor on 21 January 2020. The applicant commenced the judicial review application to challenge the first respondent's B decision. The Attorney General's Chambers represented by learned senior federal counsel opposed the application by raising a preliminary objection that as the application for leave to apply for judicial review (encl 1) was filed out of time, the court has no jurisdiction to hear the application. The issues were: (a) whether the application for leave to apply for judicial review filed was out of C time; (b) whether the applicant should file an application for extension of time first before filing her application for leave to apply for judicial review or could both applications be rolled-up in one application; and (c) whether a leave to apply for judicial review should be given.

D **Held**, allowing the judicial review application in encl 1:

(1) The decision of rejection of 6 January 2020 for the applicant's application was received by the applicant's solicitors on 21 January 2020 and with the application for leave to apply for judicial review in enclosure having been E filed on 26 February 2020 which was very much within the period of three months prescribed by O 53 r 3(6), the court found that the common preliminary objection raised by both the Attorney General's Chambers and the respondents to be unmeritorious and dismissed the same (see para 31).

F (2) The application for leave to review first respondent's decision, in not granting her the approval sought despite the high court's order giving her leave to have the said property transferred to her which resulted in her suffering what has been described above as the applicant's dilemma, wasclearly not frivolous or vexatious. there were no objections by the G Attorney General's Chambers on the application for leave to apply for judicial review and in any event, as submitted by the applicant, even if there were, with no affidavit having been filed by the Attorney General's Chambers, the objections could not have been considered (see paras 33–34).

H (3) The court had granted the extension because the reason given by the applicant that she had to take time to apply to the first respondent to reconsider the application for approval, was a good reason. The court found the reason to be good to account for any delay, at its highest, the I letters could possibly be meant for the applicant and to be certain, it was wholly reasonable for the applicant to apply to the first respondent to seek clarity (see paras 35–36).

(4) It was apt for the applicant to apply for leave to apply for judicial review and in the alternative, only if necessary, an extension of time, in one

single application because the primary position of the applicant in this case was that she has applied within time. In the circumstances, the court finds the learned SFC's objection to be without merit (see para 42).

[Bahasa Malaysia summary

Pada 26 Februari 2020, pemohon membuat permohonan di lampiran 1 untuk kebenaran bagi memohon semakan kehakiman terhadap keputusan yang dibuat oleh Pihak Berkuasa Negeri Perak yang menolak untuk memberikan kebenaran bagi dua keping tanah yang diwarisi oleh pemohon dari harta pusaka arwah ayahnya kepada beliau. Dengan peringatan, beliau memohon lanjutan masa, sekiranya perlu, untuk beliau membuat permohonan semakan kehakiman. Mahkamah membenarkan kedua-dua permohonan tersebut pada 25 September 2020. Pihak responden membuat rayuan. Pemohon, Menaka Deivarayan, warganegara India. Bapa beliau, SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar ('Meyyappa Chettiar'), meninggal lebih dari 44 tahun yang lalu pada 22 Mei 1976 dengan meninggalkan beliau sebagai wasi tunggal harta pusakanya. Dua keping tanah kosong yang terletak di Perak adalah sebahagian daripada harta pusakanya, satu keping tanah dipegang di bawah Geran Mukim 2109 Lot 568 dengan keluasan 3.063 hektar dan yang lain dipegang di bawah Geran Mukim 2105 Lot 800 dengan kedua-dua keping tanah tersebut di Mukim Bagan Datoh, Daerah Hilir Perak, Negeri Perak ('hartanah tersebut'). Beliau datang ke Malaysia untuk menuntut harta pusaka tersebut. Melalui perintah yang dibuat pada 26 Januari 2017, pemohon diberi kebenaran oleh Mahkamah Tinggi di Ipoh agar hartanah tersebut dipindahmilik ke atas nama beliau sebagai wasi tunggal. Sebagai bukan warganegara Malaysia, beliau dinasihatkan oleh peguamnya di Malaysia bahawa beliau memerlukan kebenaran pihak berkuasa negeri sebelum beliau dapat didaftarkan sebagai pemilik berdaftar hartanah tersebut namun ianya hanyalah formaliti. Peguamcara pemohon telah mengemukakan dua permohonan, satu untuk setiap keping tanah, kepada Pentadbir Tanah Daerah Bagan Datuk, Perak yang merupakan responden pertama untuk kebenaran pihak berkuasa negeri untuk beliau didaftarkan sebagai pemilik hartanah tersebut. Hanya pada 31 Oktober 2019 barulah peguam beliau menyedari bahawa kedua-dua permohonan tersebut telah ditolak. Tidak ada alasan diberikan untuk penolakan pertama yang terkandung dalam kedua-dua surat bertarikh 23 Julai 2019. Pemohon menerima nasihat peguamcara beliau untuk memohon kepada responden pertama untuk mempertimbangkan semula penolakan tersebut tetapi sekali lagi pemohon ditolak tanpa alasan diberikan ('penolakan pada 6 Januari 2020'). Penolakan tersebut diterima oleh peguamcara pemohon pada 21 Januari 2020. Pemohon memulakan permohonan semakan kehakiman untuk mencabar keputusan responden pertama. Jabatan Peguam Negara yang diwakili oleh peguam kanan persekutuan yang bijaksana membantah permohonan tersebut dengan mengemukakan bantahan awal bahawa oleh kerana permohonan kebenaran untuk memohon semakan kehakiman (lampiran 1) difailkan di luar waktu,

A mahkamah tidak mempunyai bidang kuasa untuk mendengar permohonan tersebut. Isu-isu adalah: (a) sama ada permohonan kebenaran untuk mengemukakan semakan kehakiman yang difailkan adalah di luar waktu; (b) sama ada pemohon harus memfailkan permohonan untuk lanjutan masa terlebih dahulu sebelum beliau memfailkan permohonan kebenaran untuk B memohon semakan kehakiman atau sama ada kedua-dua permohonan itu dapat dicantum menjadi satu permohonan; dan (c) sama ada kebenaran untuk memohon semakan kehakiman harus dibenarkan.

C **Diputuskan**, membenarkan permohonan semakan kehakiman dalam lampiran 1:

(1) Keputusan penolakan pada 6 Januari 2020 untuk permohonan pemohon telah diterima oleh peguamcara pemohon pada 21 Januari 2020 dan dengan permohonan kebenaran untuk memohon semakan kehakiman di lampiran telah difailkan pada 26 Februari 2020 yang mana D adalah masih dalam tempoh tiga bulan yang ditetapkan oleh A 53 k 3(6), mahkamah mendapati bahawa bantahan awal yang dikemukakan masing-masing oleh Jabatan Peguam Negara dan pihak responden adalah tanpa merit dan telah ditolak (lihat perenggan 31).

E (2) Permohonan kebenaran untuk semakan keputusan responden pertama, dalam tidak memberikan kebenaran yang dipohon meskipun perintah mahkamah tinggi memberinya kebenaran kepada beliau dalam mendapatkan hartanah tersebut telah mengakibatkan kesusahan kepada beliau yang mana telah dijelaskan di atas sebagai dilema pemohon, jelas F sekali bukanlah remeh dan menyusahkan. Tidak ada sebarang bantahan oleh Jabatan Peguam Negara mengenai permohonan kebenaran untuk memohon semakan kehakiman dan dalam apa jua keadaan, seperti yang dikemukakan oleh pemohon, sekiranya ada, tanpa sebarang afidavit difailkan oleh Jabatan Peguam Negara, bantahan tersebut tidak dapat G dipertimbangkan (lihat perenggan 33–34).

(3) Mahkamah telah membenarkan lanjutan tersebut kerana alasan yang diberikan oleh pemohon bahawa beliau harus mengambil masa untuk memohon kepada responden pertama untuk mempertimbangkan H kembali permohonan untuk kebenaran, adalah alasan yang baik. Mahkamah mendapati bahaw alasan tersebut adalah baik untuk menjelaskan sebarang kelewatan, di puncaknya, surat-surat tersebut adalah untuk pemohon dan sebagai kepastian, adalah wajar bagi pemohon untuk memohon kepada responden pertama untuk meminta I penjelasan (lihat perenggan 35–36).

(4) Adalah tepat bagi pemohon untuk memohon kebenaran untuk memohon semakan kehakiman dan sebagai alternatif, sekiranya perlu, suatu lanjutan masa, dalam satu permohonan kerana kedudukan utama pemohon dalam hal ini adalah beliau telah memohon dalam tempoh

masa. Dalam keadaan seperti itu, mahkamah mendapati bantahan SFC yang bijaksana adalah tanpa merit (lihat perenggan 42).]

Cases referred to

Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor [2008] 6 MLJ 704, CA (refd)

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145, FC (refd)

Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association [1990] 3 MLJ 228, SC (refd)

HRC Shipping Sdn Bhd v Ketua Pengarah Jabatan Laut, Pelabuhan Klang & Ors [2016] 12 MLJ 218, HC (refd)

Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors [2019] 5 MLJ 1; [2019] 7 CLJ 395, FC (refd)

Ketua Pengarah Kastam dan Eksais v Coach Malaysia Sdn Bhd [2019] MLJU 47, CA (refd)

Md Hairul bin Ithnin lwn Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No 1) Jabatan Kastam Diraja Malaysia, Putrajaya dan lain-lain [2018] MLJU 796; [2018] 1 LNS 838, HC (refd)

Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd [2002] 1 MLJ 385; [2002] 1 CLJ 645, FC (folld)

Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd [2010] 4 MLJ 360; [2010] 5 CLJ 123, CA (refd)

Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor [1983] 2 MLJ 54; [1983] CLJ Rep 266, FC (refd)

Perfect Nation Development Sdn Bhd v Soria Ibrahim & Satu Lagi [2015] 6 CLJ 514, HC (refd)

Ravindran v Malaysian Examination Council [1984] 1 MLJ 168, FC (refd)

Roland Hermann Wilhelm Becker lwn Surendra Naidu a/l PT Naidu dan lain-lain [2017] MLJU 1450; [2017] 1 LNS 1540, HC (refd)

Sayid Alwi bin Syed Ahmad v ACP Wan Hassan bin Wan Ahmad & Ors [2018] MLJU 1299; [2018] 1 LNS 1362, HC (refd)

Sundra Rajoo a/l Nadarajah v Attorney General [2020] 3 MLJ 788, CA (refd)

Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as firm) [2015] 2 MLJ 1, CA (folld)

Teoh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional [2015] MLJU 213, CA (refd)

Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor [2013] 4 MLJ 161; [2013] 4 CLJ 193, FC (refd)

Yick Hoe Ferrous Steel Sdn Bhd v Tribunal Rayuan Kastam & Ors [2010] MLJU 1407; [2011] 7 CLJ 544, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 96(a), Schedule
Distribution Act 1958 s 6(1)(c)
Federal Constitution art 8(1)
Land Acquisition Act 1960 s 3(1)(c), 3(2)
Legal Profession Act 1976
National Land Code s 433B
Rules of Court 2012 O 53, O 53 rr 3, 3(1), (2), (3), (6), (7), O 92(4)
Rules of the Federal Court 1995 r 137
Specific Relief Act 1954 Chapter VIII, Part 2

K Shanmuga (Dinesh Kumar Paramasivam with him) (Kanesalingam & Co) for the applicant.
Hezlin Haldi (Senior Federal Counsel, Attorney General's Chambers); Suhaila Haron (Assistant State Legal Advisor, State Legal Advisor Offices) for the respondents.

Su Tiang Joo JC:

INTRODUCTION

[1] On 26 February 2020, the applicant applied (encl 1) for leave to apply for judicial review of the decision made by the state authority of Perak refusing to give its consent for two pieces of lands which the applicant inherited from her late father's estate to be transferred to her. In abundance of caution, she applied for an extension of time, if necessary, for her to make the application for judicial review. The court allowed both the applications on 25 September 2020. The respondents appealed.

BACKGROUND FACTS

[2] The applicant, Menaka Deivarayan, is an Indian national. She is 78 years old. Her father, SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar ('Meyyappa Chettiar'), died more than 44 years ago on 22 May 1976 leaving her the sole beneficiary of his estate. Two pieces of vacant land situated in Perak are part of his estate, one piece held under issue document of title Geran Mukim 2109 Lot 568 with an area of 3.063 hectares and the other held under Geran Mukim 2105 Lot 800 with both pieces of land in Mukim Bagan Datoh, Daerah Hilir Perak, Negeri Perak ('the said property'). She came to Malaysia to claim her inheritance.

[3] By order made on 26 January 2017, she was granted leave by the High Court at Ipoh for the said property to be transferred into her name as the sole beneficiary. Being a non-citizen of Malaysia, she was advised by her solicitors in Malaysia that she needed the consent of the state authority before she can be

registered as the registered proprietor of the said lands but that this is only a formality.

[4] On 19 December 2018, her local solicitors submitted two applications, one for each piece of land, to the Pentadbir Tanah Daerah Bagan Datuk, Perak who is the first respondent ('R1') for the state authority's approval for her to be registered as the proprietor of the said property. Only on 31 October 2019 were her solicitors made aware that these two applications were rejected ('first rejection'). No reasons at all were given for the first rejection contained in two letters both dated 23 July 2019 (encl 3 exh MD8 pp 80–81) and both of which, *were not addressed to the applicant but to her late father*. (Emphasis added.)

[5] Instead of running to court at the drop of a hat, the applicant accepted the advice of her solicitors to apply to R1 to reconsider this purported rejection. This she did. By letter dated 26 November 2019 (encl 3 exh MD3) she applied, calling upon R1 to reconsider her application on the following grounds:

5.1 she is inheriting the said property from her late father and is not acquiring them per se;

5.2 such an application for the state authority's approval is usually a formality especially if the individual has complied with all the necessary requirements as in her case;

5.3 she has obtained a High Court order dated 26 January 2017 granting her leave to transfer the said property into her name as the sole beneficiary of the estate (of her late father); and

5.4 as her late father acquired interest in both the lands comprising the said property in 1976 which is before the provisions on the restrictions in dealings by non-citizens acquiring land in the National Land Code came into force, the said restrictions ought not to apply.

[6] On 21 January 2020, her solicitors received a letter from R1 dated 6 January 2020 (encl 3 exh MD11 p 93) informing them that her application for reconsideration had been rejected ('rejection of 6 January 2020') and apologising for any inconvenience. However, just as in the first rejection, no reasons at all were given for the rejection of 6 January 2020.

A THE APPLICANT'S DILEMMA

[7] With no reasons given by the state authority for both the first rejection and the rejection of 6 January 2020 and not being able to have the said property registered in her name despite being armed with a High Court order giving her leave to have the said property transferred to her, what is the applicant to do; how is she to deal with the said property; has she been deprived of her rights to the said property; has the state acquired the said property or what?

C LEGAL ACTION

[8] To have her questions answered, the applicant commenced this action (encl 1) for leave to commence judicial review for the following reliefs:

D 8.1 a certiorari order that the respondents' decisions found in the rejection of 6 January 2020 and that in the first rejection ('impugned decisions') be removed to the High Court to be quashed;

E 8.2 a declaration that the approval of the state authority of Perak is not required in relation to the devolution of all interest in the assets of the applicant's father, the late SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar to the applicant, being the applicant's inheritance of the said property under s 6(1)(c) of the Distribution Act 1958;

F 8.3 in the alternative, a declaration that all the applicant's interest in the said property be acquired by the State Government of Perak, the third respondent, under the provisions of s 3(1)(c) of the Land Acquisition Act 1960 with adequate compensation to be paid to the applicant under this G Act and pursuant thereto, the respondents shall prepare all formal documents pursuant to s 3(2) thereof within three months;

8.4 costs for the leave and substantive application for judicial review be paid H to the applicant; and

8.5 such further or other relief as is considered just by this honourable court.

I PROCEDURAL REQUIREMENTS

[9] Besides the inherent powers granted to the superior courts under the Schedule to the Courts of Judicature Act 1964 (Act 91) and the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1954 (Act 137), the procedure involved in judicial review is regulated by O 53 of the Rules of Court 2012 (all

references henceforth to O 53 and its rules shall be deemed to be references to O 53 and its Rules under the Rules of Court 2012 unless expressly stated otherwise).

[10] Pursuant to O 53 r 3, an application for judicial review shall not be made unless leave therefor has been granted (O 53 r 3(1)); the application for leave is to be made ex parte (O 53 r 3(2)); the applicant to give notice to the Attorney General's Chambers not later than three days before the hearing date (O 53 r 3(3)); the application is to be made within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant (O 53 r 3(6); the court may, upon an application, extend the time specified in r 3(6) if it so considers there is good reason for doing so; and an application to extend time must be served on all respondents and shall be heard inter partes (the parts in bold are the parts that proved to be contentious in the hearing of encl 1).

[11] If the date when the grounds of application first arose or when the decision is first communicated to the applicant is 21 January 2020, the date when the applicant's solicitors received notice of the rejection of 6 January 2020, she would have filed her application very well within the time prescribed in O 53 r 3(6) of three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant as she has filed her application (encl 1) on 26 February 2020.

[12] However, if the date of receipt of the first rejection on 31 October 2019 is the date when the grounds of application first arose or when the decision is first communicated to the applicant, her application would have been filed 26 days outside the time prescribed by O 53 r 3(6).

APPLICATION MADE *EX ABUNDANTI CAUTELA* (IN ABUNDANCE OF CAUTION)

[13] In abundance of caution, in prayer 2 of her application (encl 1), the applicant prayed that if this honourable court finds that the rejection of 6 January 2020 does not make it a new decision by the respondents which is capable of replacing the first rejection, then that the time for filing her application (encl 1) be extended to the date her application was filed ie to the 26 February 2020.

CHALLENGES IN OPPOSITION

[14] The Attorney General's Chambers represented by learned senior federal counsel opposed the application by raising a preliminary objection that as the application for leave to apply for judicial review (encl 1) was filed out of time,

this court has no jurisdiction to hear the application (see the written submissions of the learned SFC in encl 17 p 6.)

[15] The (putative) respondents opposed the application on the following grounds (see the written submissions of the learned assistant state legal advisor ('ASLA') in encl 14 p 4):

15.1 the application is irregular because the ex parte application for leave was not filed within the time prescribed under O 53 r 3(6);

15.2 there is no good reason to abridge/extend the time as prescribed under O 53;

15.3 the application is premature; and

15.4 the applicant's application is frivolous and vexatious.

[16] The following authorities were cited by the learned SFC and the learned ASLA for the principle that the timeline for applying for judicial review must be strictly complied with, failing which, the court has no jurisdiction to hear the application:

16.1 *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145 (FC);

16.2 *Ravindran v Malaysian Examination Council* [1984] 1 MLJ 168 (FC);

16.3 *Yick Hoe Ferrous Steel Sdn Bhd v Tribunal Rayuan Kastam & Ors* [2010] MLJU 1407; [2011] 7 CLJ 544 (HC);

16.4 *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd* [2010] 4 MLJ 360; [2010] 5 CLJ 123 (CA); and

16.5 *Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor* [2008] 6 MLJ 704 (CA).

[17] The following authorities were cited by the learned SFC and the learned ASLA for the principle that any delay in making the application for leave to apply for judicial review must be accounted with a good reason, failing which, the court should decline to hear the application for leave to apply for judicial

review as the court would have no jurisdiction to do so:

17.1 *Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161; [2013] 4 CLJ 193 (FC) — 14 months delay;

17.2 *Ketua Pengarah Kastam dan Eksais v Coach Malaysia Sdn Bhd* [2019] MLJU 47 — three months delay;

17.3 *Sayid Alwi bin Syed Ahmad v ACP Wan Hassan bin Wan Ahmad & Ors* [2018] MLJU 1299; [2018] 1 LNS 1362 (affirmed on appeal to the CA) — two years seven months late from *perintah tahan kerja* or nine months late from *perintah buang kerja*;

17.4 *Md Hairul bin Ithnin lwn Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No 1) Jabatan Kastam Diraja Malaysia, Putrajaya dan lain-lain* [2018] MLJU 796; [2018] 1 LNS 838 — 27 days delay; and

17.5 *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor* [1983] 2 MLJ 54; [1983] CLJ Rep 266 FC — delay to be accounted for.

[18] The learned SFC further submitted (encl 17 p 17 para 43) that the High Court in the case of *Perfect Nation Development Sdn Bhd v Soria Ibrahim & Satu Lagi* [2015] 6 CLJ 514 held that an application for extension of time must first be filed and an order for an extension of time obtained before any application for leave to apply for judicial review can be filed.

[19] The learned ASLA relied on the authority of *Sayid Alwi bin Syed Ahmad* where the High Court held that the issue with regard to the extension of time would have to be considered as a prerequisite before determining the leave application for judicial review.

[20] In the application (encl 1) before the court, the alternative application for extension of time was one rolled-up with the ex parte leave application for judicial review.

[21] The Attorney General's Chambers in their submissions both written (encl 17) and the learned SFC in her oral submissions on 25 September 2020, made it clear that they were only raising the timeline challenge which goes towards whether the court has jurisdiction to hear the application for leave to

apply for judicial review and will not deal with the merits of the application for judicial review.

[22] Although the learned ASLA in their written submissions (encl 14 pp 25–26 paras 3.34 and 3.38) invoked the provisions of s 433B of the National Land Code as well as the authority of *Roland Hermann Wilhelm Becker lwn Surendra Naidu a/l PT Naidu dan lain-lain* [2017] MLJU 1450; [2017] 1 LNS 1540 (HC) on the need for the applicant, a non-citizen to secure the prior approval of the state authority before she can acquire land, an issue which goes towards the merits of the application, in their written submissions (encl 14 pp 6–9, 29–30 paras 3.4 to 3.8, 3.39 and 3.40) she submitted that the court should not go into the merits of the case.

[23] The conflicting positions of the respondents was made clear during the oral submissions made on 25 September 2020 when the learned ASLA submitted only on the issue of the timeline challenge. However, the respondents, would in the ordinary course, be entitled to submit on the merits of the application during the substantive hearing of the application for judicial review.

[24] The court further observed that although the respondents had in their written submissions (encl 14 p 4 para 2.2(iii)) raised an objection on a point in law that the application of the applicant was 'premature', no submissions were made on this objection both in the written submissions as well as during oral submissions.

ISSUES FOR CONSIDERATION

[25] The challenges in opposition necessitated the court having to deal with the following issues:

25.1 was the application for leave to apply for judicial review filed out of time;

25.2 if so, should the applicant have filed an application for extension of time first before filing her application for leave to apply for judicial review or could both applications be rolled-up in one application; and

25.3 should leave to apply for judicial review be given.

COURT'S DECISION MADE ON 25 SEPTEMBER 2020

[26] On 25 September 2020, after hearing the oral submissions of both the learned SFC and the learned ASLA, the court allowed the applicant's

applications in encl 1 and granted leave to the applicant to apply for judicial review for the following reliefs:

26.1 a certiorari order that both the (first) respondent's decision in writing dated 6 January 2020 and the (first) respondent's previous decision in writing dated 23 July 2019 ('impugned decision') be removed to the High Court to be quashed;

26.2 a declaration that the approval of the state authority of Perak is not required in relation to the devolution of all interest in the assets of the applicant's father, the late SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar, to the applicant, being the applicant's inheritance of the said property under s 6(1)(c) of the Distribution Act 1958;

26.3 alternatively, a declaration that all the applicant's interest in the said property be acquired by R3 under the provisions of s 3(1)(c) of the Land Acquisition Act 1960 with adequate compensation to be paid to the applicant under the said Act and pursuant thereto, the respondents shall prepare all formal documents pursuant to s 3(2) of the said Act within three months;

26.4 that even if R1's decision in his letter of 6 January 2020 does not make it a new decision by the respondents which is capable of replacing the decisions found in the two letters dated 23 July 2019 and received by the applicant only on 31 October 2019, the time for filing the application for leave for judicial review be extended to the date this application was filed, which is 26 February 2020;

26.5 the costs for the proceedings thus far be in the cause; and

26.6 that the hearing of the substantive application for judicial review be on 12 November 2020.

FINDINGS

[27] The court was of the opinion that if the applicant had applied for leave to apply for judicial review based upon the two letters carrying the decision for the first rejection made on 23 July 2019, it would have been *wholly premature* for the following reasons:

27.1 in the two separate application forms (encl 3 p 47 and 55) for approval for the said property to be transferred to the applicant, the name of the applicant, although written in manuscript, can be clearly seen to be that of *Menaka Deivarayan*, the applicant in this action;

27.2 the particulars of *the applicant complete with her name, Menaka Deivarayan,* and passport number were expressly set out in the accompanying form with the heading 'Bahagian A — Maklumat Pemohon' (encl 3 pp 48 and 56);

27.3 the accompanying letter dated 18 December 2018 (encl 3 p 44) clearly carried the caption 'Permohonan Di Bawah Seksyen 433B (A) dan Seksyen 14(a), (aa) dan (ab) Kanun Tanah Negara Untuk Mendapatkan Kebenaran Pemerolehan Tanah/Kepentingan Mengenai Tanah *Oleh Menaka Deivarayan* (No Pasport: Z2109955) that is the application was made by the applicant;

27.4 then there followed three letters of reminders to R1 to follow up on the two applications, the first dated 21 March 2019, the second dated 20 June 2019 and the third dated 17 September 2019 and in all three reminders the same caption carrying the name of *Menaka Deivarayan* as the applicant was set out; and

27.5 however, the decisions in these two letters were addressed *not to Menaka Deivarayan* but to SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar;

27.6 these two letters although said to have been posted out by R1 were never received by the applicant (encl 3 p 19 para 11) and it was only at the suggestion of R1 via letter dated 15 October 2019 (encl 3 p 78) that a copy of the decision be purchased that a copy of the two separate decisions contained in both the letters of 23 July 2019 *addressed to SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar* were obtained by the solicitors for the applicant on 31 October 2019; (Emphasis added.);

27.7 a reading of these two letters would lead to the inferences that R1 had gotten the facts wrong in mistaking the late SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar to be the applicant rather than *Menaka Deivarayan* or that the letters were meant to be addressed to Menaka Deivarayan but was incorrectly addressed to SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar;

27.8 as the decisions in the two letters stood as at 31 October 2019, the inference and conclusion that ought to be drawn is that both these letters and decisions were not meant for the applicant but for SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar as that was what the two letters clearly said; and

27.9 the court drew such a conclusion.

[28] What about the applicant's applications?

[29] In following up on this, and when one seeks the exercise of a power by a third party for one's benefit and in dealing with the might of the state authority, it was wholly natural and reasonable for the applicant to very politely call upon R1 to reconsider its decision with the use of the term 'menimbang semula' in its letter of 26 November 2019 (encl 3 pp 85–91).

[30] The decision that came from R1 in his letter dated 6 January 2020 replying that the request in the aforementioned letter of 26 November 2019 'DITOLAK' (dismissed) makes it clear that the application of *the applicant* has been dismissed. Clarity can now be seen that in this letter which carries the caption '*Permohonan* Untuk Menimbang Semula Keputusan Untuk Menolak Permohonan Yang DiBuat Di Bawah Seksyen 433B Dan Seksyen 14(a)(aa) Dan Memperoleh Tanah/Kepentingan Ke Atas Tanah *Oleh Menaka Deivarayan* (No Passport: Z2109955) (Emphasis added.) that is, the application by *the applicant* is dismissed.

[31] The decision of rejection of 6 January 2020 for the applicant's application was received by the applicant's solicitors on 21 January 2020 and with the application for leave to apply for judicial review (encl 1) having been filed on 26 February 2020 which is very much within the period of three months prescribed by O 53 r 3(6), the court finds the common preliminary objection raised by both the Attorney General's Chambers and the respondents to be unmeritorious and dismissed the same.

[32] The court then proceeded to consider the merits of the application by the applicant for leave to apply for judicial review. On this, it is settled law that the threshold is low in that so long as the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application, leave ought to be granted, see *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association* [1990] 3 MLJ 228 (SC) at p 229 paras B–C RHS, *Sundra Rajoo a/l Nadarajah v Attorney General* [2020] 3 MLJ 788 (CA) at paras 30–31.

[33] On the facts that obtain in this case, the application for leave to review R1's decision, in not granting her the approval sought despite the High Court's order giving her leave to have the said property transferred to her which resulted in her suffering what has been described above as the applicant's dilemma, is clearly not frivolous or vexatious.

[34] Save for the timeline challenge, there were no objections by the Attorney General's Chambers on the application for leave to apply for judicial review and in any event, as submitted by the applicant, even if there were, with no affidavit having been filed by the Attorney General's Chambers, the objections could not have been considered, see *Teoh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional* [2015] MLJU 213 (CA) para 11.

THE *EX ABUNDANTI CAUTELA* APPLICATION

[35] In the course of making the decision on encl 1, for the sake of completeness, the court had also allowed the (alternative) abundance of caution application, namely that, if an extension of time was in fact required, the court had granted the extension because the reason given by the applicant that she had to take time to apply to R1 to reconsider the application for approval, was a good reason.

[36] The court found the reason to be good to account for any delay, if any, for the reasons contained in paras 27.1 to 27.8 above save that this time, at its highest, the letters could possibly (not probably) be meant for the applicant and to be certain, it was wholly reasonable for the applicant to apply to R1 to seek clarity.

[37] With respect to both the learned SFC and the learned ASLA, it is unreasonable to complain of an alleged (26 days) delay purely by looking at the period between the date of receipt of the two letters on 31 October 2019 and the filing of the application (encl 1) on 26 February 2020 when:

37.1 the applicant had not gone to sleep on her rights but had through her solicitors put up an elaborate letter dated 26 November 2019 (encl 3 pp 85 to 91) to R1 complete with details and legal assertions on why her two applications for approval ought to be allowed;

37.2 attention of the respondents were drawn to the court order of 26 January 2017 (encl 3 pp 41 and 42) made by the High Court at Ipoh under Originating Summons No AA-24NCVC-620–12 of 2016 giving the applicant liberty to have the said property transferred to her name as the sole beneficiary to the said property;

37.3 from the date of the two applications made on 18 December 2018 and received by the R1 on 19 December 2018, it had taken almost 10 months for his decision to reach the applicant and who was then subjected to having to purchase a copy of his decision which as it turned out was not addressed to the applicant but to (the late) SKMSP Meyyappa Chettiar a/l Subramaniam Chettiar;

37.4 as submitted by the applicant (encl 22 para 16) and which the court accepts as a good reason, the time taken by the applicant to attempt to try to resolve the matter amicably with R1 without first resorting to litigation should be discounted. This would mean that the time taken from the 31 October 2019 until the receipt of the rejection of 6 January 2020 on 21 January 2020, a period of two months and three weeks ought to be discounted and by reason thereto, there was no delay on the part of the applicant and even if there was, she had a good reason for it; and

37.5 beyond the respondents' complaint about the application (encl 1) being purportedly filed out of time and by reason thereto that they should be entitled to (enjoy) being immune to challenge (encl 14 para 3.32), no proposal for resolving the applicant's dilemma was forthcoming despite hinting at the applicant's application being premature (encl 14 para 2.2 (iii)). In fact, taking the respondents submissions that encl 1 is premature at face value, it begs the question why are the respondents being coy about what alternative redress is available to the applicant in the circumstances that obtain in this case.

[38] In the case of *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1; [2019] 7 CLJ 395 at para 85 thereof, the Federal Court accepted that delay with the view to trying not to escalate matters in view of on-going without prejudice negotiations can be a good justifiable reason to explain the delay in applying for an injunction application where delay is often viewed as fatal.

[39] If without prejudice negotiations between men of commerce can be an acceptable reason to delay legal proceedings, the corollary would be the attempt to resolve the matter amicably between a private individual on the one hand and the might of the state on the other which ought to be all the more accepted when the private individual has to rely upon the state to grant the approval sought. On this, the court has at the forefront of the court's mind that art 8(1) of the Federal Constitution expressly provides that:

> All persons are equal before the law and entitled to the equal protection of the law.

[40] Further, as rightly submitted by counsel for the applicant, the courts at all levels encourage parties to try to resolve disputes with alternative modes such as mediation, with litigation to be resorted to only as a mode of last resort.

ROLLED-UP APPLICATION

[41] On the objection raised by the learned SFC that if an application for extension of time is required, such an application must first be pursued before the application for leave to apply for judicial review, the learned SFC relied upon the High Court authority of *Perfect Nation Development Sdn Bhd v Soria Ibrahim & Satu Lagi*. On the other hand, the applicant relied upon the High Court authority of *HRC Shipping Sdn Bhd v Ketua Pengarah Jabatan Laut, Pelabuhan Klang & Ors* [2016] 12 MLJ 218 which held that an application for an extension of time and leave to apply for judicial review can be made in a single application.

[42] On the facts that obtain in this case, it is apt for the applicant to apply for leave to apply for judicial review and in the alternative, only if necessary, an extension of time, in one single application because the primary position of the applicant in this case was that she had applied within time. In the circumstances, the court finds the learned SFC's objection to be without merit.

[43] Even if an extension of time has to be first pursued, the court would further opine that it would serve to secure the overarching need to secure the just, expeditious and economical disposal of the action if the application for the leave application for judicial review is made in the same application. This is because in the event of any appeal, both applications can similarly be dealt with together with its attendant saving in time and costs. If there is no appeal on the extension of time application, if at all necessary, and if proceedings are not stayed, the substantive application for judicial review can proceed to be disposed of expeditiously.

JUSTICE OF THE CASE

[44] Although the merits of the case ought not to be decided at the hearing of an application at the initial stage of deciding whether leave to apply for judicial review ought to be given, in applying the threshold test of deciding that the application is not frivolous or vexatious, the court ought not to wear blinkers and be concerned purely with the delay.

[45] The provisions of O 53 r 3(7) which expressly sets out the discretion given to the court to extend the time under O 53 on application for judicial review if the court considers that there is a good reason for doing so, is of great significance.

[46] The significance, to the court's mind, is that the discretion for extending time is *given to the court* to extend time if there is *a good reason to do so* and it must also mean when it is just to do so. In support for this, the court refers to two authorities, one is the Federal Court authority of *Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385; [2002] 1 CLJ 645 and the other, the Court of Appeal authority of *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as firm)* [2015] 2 MLJ 1.

[47] In the *Megat Najumuddin* case, Steve Shim CJSS, (as His Lordship then was) despite holding that the applicant (for leave to appeal to the Federal Court) *did not qualify* within the perceptibly narrow confines of s 96(a) of the Courts of Judicature Act *as to bring himself within the jurisdiction* (emphasis added) of the Federal Court to pursue his application for leave, allowed the application premised upon the inherent powers of the Federal Court under r 137 of the Rules of the Federal Court 1995 to prevent injustice.

[48] In the *Tan Tek Sin*'s case, Raus Shariff PCA (as His Lordship then was) allowed a solicitor's bill of costs to be taxed despite the fact that the statutory timeline of 12 months prescribed under the Legal Profession Act 1976 had lapsed and there was no provision in the LPA to extend any more time because His Lordship found that the solicitor's fees of RM600,000 for services rendered to obtain letters of administration was exorbitant.

[49] In a similar vein, the court should not fold its arms and send the applicant away with her seemingly deprived of her fundamental right to her inheritance in the form of the said property by reason of R1's decision not to grant her the necessary approval without a single reason given. In arriving at the decision on encl 1, the court further relied upon the inherent powers it has under the equivalent of r 137 of the Federal Court Rules which is O 92(4) of the Rules of Court 2012 which is reproduced below:

> Inherent powers of the Court
>
> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make an order as may be necessary to prevent injustice or to prevent an abuse of the process of Court.

[50] In closing, it cannot be gainsaid that the respondents will have the benefit of these grounds of judgment to focus upon in their prosecution of their appeal against the court's decision unlike the applicant who was not given a single reason when both her applications for leave to have her inheritance transferred into her name were rejected by R1. Therefore, the time taken by the applicant to call upon R1 to reconsider her dilemma in the circumstances of this case is wholly reasonable and any delay, if at all, ought to be excused.

A *The applicant's judicial review application in encl 1 allowed.*

Reported by Mohd Kamarul Anwar.

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